

WRITTEN STATEMENT OF
MAUREEN MCGRATH
ON BEHALF OF THE NATIONAL ADVOCACY
AGAINST MORTGAGE SERVICING FRAUD
SUBMITTED TO THE
HOUSE COMMITTEE ON FINANCIAL SERVICES
HEARING ON
LEGISLATIVE PROPOSALS ON
REFORMING MORTGAGE PRACTICES
HOUSE BILL 3837
THE “ESCROW, APPRAISAL, AND MORTGAGE SERVICING
IMPROVEMENTS ACT”

OCTOBER 24, 2007

Distinguished members of the Committee, allow me to introduce myself. My name is Maureen McGrath, and I submit this statement on behalf of the National Advocacy Against Mortgage Servicing Fraud. I wish to thank you for holding this important hearing to examine the proposed Escrow, Appraisal, And Mortgage Servicing Improvements Act. I would also like to extend a special thank you to Congressman Kanjorski for keeping this issue in the forefront of his thoughts, and in bringing this vital bill to life in an attempt to protect not only the rights of his constituents in the Poconos and nationwide, but the rights of investors in the mortgage securitization market.

What you have before you is a bill that places into effect safeguards that will protect not only the rights of homeowners, but the housing market, the ability of financial institutions to continue to offer financial assistance to homeowners and potential homeowners in the form of affordable mortgages, and the continued confidence of the investors in the various forms of securitization of the notes connected with the financing of homes.

In June, 2004, I and other interested citizens testified before the Subcommittee on Capital Markets, Insurance and Government Sponsored Enterprises field hearing on “Broken Dreams in the Poconos”. At that point in time, mortgage servicing fraud was barely being recognized, and the Curry v. Fairbanks litigation was newly filed in Massachusetts. My testimony encompassed the illegal acts perpetrated by Fairbanks Capital on unsuspecting homeowners, and the drastic effects their illegal maneuverings were having on said homeowners. In that testimony, I warned of the potential dangers that mortgage servicing fraud could have on the real estate market as a whole, and the ability of financial institutions to continue to fund mortgages for people with less than perfect credit. Those dire warnings have now come to pass. We have seen the collapse of hedge

funds which incorporated so-called “sub-prime” notes, and the effect the collapse of those funds have had on the stock market. What must be realized is that not all sub-prime loans are non-performing nor are all prime or “A paper” loans performing. Instead, it must be understood that what we are seeing is a combination of poor underwriting, inflated and fraudulent appraisals, mortgage servicing fraud, and deception.

As an example, I draw your attention to the much-heralded *Curry v. Fairbanks* Class Action. Although Fairbanks entered into an agreement for Best Practices with the FTC, what was hidden beneath the surface was the continued illegal acts of Fairbanks. Litigation, brought by investors of several REMIC’s, is now ongoing concerning practices that allowed Fairbanks to earn an improper windfall in various ways. First to the extent Fairbanks collected late and other fees from borrowers, Fairbanks kept them as part of its servicing compensation. Second, to the point that Fairbanks made servicing advances, Fairbanks was allowed to be reimbursed from “monthly excess cash flow” at the expense of the certificate holders. Third, Fairbanks was allowed to be reimbursed for “servicing advances” from the liquidation of said loans. This systematic bilking of borrowers led to a reduction of the liquidation of proceeds payable to the certificate holders, and inflation and overstatement of deficiency balances.

Advocates have also seen, and are following closely, the continued practice of one servicer, EMC Mortgage, a subsidiary of Bear Stearns, to create fraudulent documents in foreclosure actions. In one such case, *Wright v. EMC*, filed in Collin County, Texas, Wright successfully fought off foreclosure attempts by EMC for ten years, until EMC reached back in time, and discovered a note that was assumed by the RTC. Because of the confusion and various other issues of that time, many notes held by RTC were never

marked “satisfied” when the properties were sold to new owners. Such was the case in *Wright v. EMC*. EMC reached back to the RTC Note, and through various fraudulent documents, convinced the court that the note they were foreclosing on was the note once held by the RTC in the developer's name, and not the Wright note. Mr. Wright was evicted from his home this summer. Other cases, still ongoing, reveal that EMC has consistently filed documents claiming ownership of notes prior to the entity from which EMC purchased the notes ever had legal title to either the notes or in certain cases, the REMICs.

In addition, we still have on-going litigation dealing with Fairbank’s placing of force-placed insurance on various residences prior to the *Curry* settlement. The placing of said force-placed insurance placed the homeowners in default, and today, years later, these innocent and harmed individuals still have not recaptured a normal life and are still fighting for their rights to stay in their homes.

The Committee must focus on the fact that investors have lost their confidence in residential mortgage securities and have reduced their participation in the secondary mortgage market. Such a loss of confidence has occurred because investors feel that disclosure has been inadequate, they have suffered losses from issuer or servicer fraud, and they may become subject to assignee liability for predatory lending practices. Of particular note, is the fact that some subprime lenders have committed servicing fraud to avoid repurchasing loans that suffered early payment defaults (i.e., the lenders made payments on behalf of the borrowers in order to avoid reporting the loan as delinquent). The bill you have before you contains safeguards that will restore the confidence of

investors, and the required studies will be far reaching in determining if servicers are using any other illegal or subversive practices in order to achieve illegal windfalls.

I urge the Committee to recommend approval of this bill at the earliest possible opportunity. This concludes my statement. Thank you for your time and consideration.